
By: **Senator Gladden**

Introduced and read first time: February 6, 2004

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Children in Need of Assistance - Guardianship**

3 FOR the purpose of authorizing a juvenile court to grant guardianship of certain
4 children to certain individuals; providing for the effect of an order granting
5 guardianship; authorizing the court to order certain reviews after granting
6 guardianship to an individual; requiring certain considerations before the court
7 grants guardianship; prohibiting the court from entering an order granting
8 guardianship before a certain time; altering the purpose of the Court-Appointed
9 Special Advocate Program; altering the permanency plans that a local
10 department of social services is required to consider for a child in an
11 out-of-home placement; requiring the Social Services Administration to adopt
12 certain regulations; and generally relating to guardianship of certain children.

13 BY repealing and reenacting, without amendments,
14 Article - Courts and Judicial Proceedings
15 Section 3-819(b) and (c) and 3-823(e) and (h)(1)
16 Annotated Code of Maryland
17 (2002 Replacement Volume and 2003 Supplement)

18 BY adding to
19 Article - Courts and Judicial Proceedings
20 Section 3-819.2
21 Annotated Code of Maryland
22 (2002 Replacement Volume and 2003 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Courts and Judicial Proceedings
25 Section 3-830(b)
26 Annotated Code of Maryland
27 (2002 Replacement Volume and 2003 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article - Family Law

1 Section 5-525(e) and (i)
2 Annotated Code of Maryland
3 (1999 Replacement Volume and 2003 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article - Courts and Judicial Proceedings**

7 3-819.

8 (b) In making a disposition on a CINA petition under this subtitle, the court
9 shall:

10 (1) Find that the child is not in need of assistance and, except as
11 provided in subsection (e) of this section, dismiss the case; or

12 (2) Find that the child is in need of assistance and:

13 (i) Not change the child's custody status; or

14 (ii) Commit the child to the custody of:

15 1. A parent, relative, or other individual on terms the court
16 considers appropriate; or

17 2. A local department, the Department of Health and Mental
18 Hygiene, or both, on terms that the court considers appropriate, including designation
19 of the type of facility where the child is to be placed.

20 (c) In addition to any action under subsection (b)(2) of this section, the court
21 may:

22 (1) (i) Place a child under the protective supervision of the local
23 department on terms the court considers appropriate;

24 (ii) Grant limited guardianship to the department or an individual
25 or both for specific purposes including medical and educational purposes or for other
26 appropriate services if a parent is unavailable, unwilling, or unable to consent to
27 services that are in the best interest of the child; or

28 (iii) Order the child and the child's parent, guardian, or custodian to
29 participate in rehabilitative services that are in the best interest of the child and
30 family; and

31 (2) Determine custody, visitation, support, or paternity of a child in
32 accordance with § 3-803(b) of this subtitle.

1 3-819.2.

2 (A) SUBJECT TO SUBSECTION (E) OF THIS SECTION, THE COURT MAY GRANT
3 GUARDIANSHIP TO A RELATIVE OR A NONRELATIVE UNDER THIS SUBTITLE.

4 (B) AN ORDER GRANTING GUARDIANSHIP TO AN INDIVIDUAL UNDER THIS
5 SECTION TERMINATES THE LOCAL DEPARTMENT'S LEGAL OBLIGATIONS AND
6 RESPONSIBILITIES TO THE CHILD.

7 (C) A GUARDIAN APPOINTED UNDER THIS SUBTITLE HAS LEGAL CUSTODY OF
8 THE CHILD UNLESS THE COURT THAT APPOINTS THE GUARDIAN GIVES LEGAL
9 CUSTODY TO ANOTHER PERSON.

10 (D) AFTER GRANTING GUARDIANSHIP TO AN INDIVIDUAL UNDER THIS
11 SECTION, THE COURT MAY ORDER ANY FURTHER REVIEWS THAT THE COURT
12 DETERMINES TO BE IN THE CHILD'S BEST INTERESTS, CONSISTENT WITH §
13 3-823(H)(1)(III) OF THIS SUBTITLE.

14 (E) BEFORE GRANTING GUARDIANSHIP UNDER THIS SECTION, THE COURT
15 SHALL CONSIDER:

16 (1) ANY ASSURANCE BY THE LOCAL DEPARTMENT THAT IT WILL
17 PROVIDE FUNDS FOR NECESSARY SUPPORT AND MAINTENANCE FOR THE CHILD;

18 (2) ALL FACTORS NECESSARY TO DETERMINE THE BEST INTERESTS OF
19 THE CHILD; AND

20 (3) A REPORT BY A LOCAL DEPARTMENT OR A LICENSED CHILD
21 PLACEMENT AGENCY, COMPLETED IN COMPLIANCE WITH REGULATIONS ADOPTED
22 BY THE DEPARTMENT OF HUMAN RESOURCES, ON THE SUITABILITY OF THE
23 INDIVIDUAL TO BE THE GUARDIAN OF THE CHILD.

24 (F) A COURT MAY NOT ENTER AN ORDER GRANTING GUARDIANSHIP UNDER
25 THIS SECTION UNTIL THE EARLIER OF:

26 (1) THE TIME THAT THE REPORT UNDER SUBSECTION (E)(3) OF THIS
27 SECTION IS SUBMITTED TO AND CONSIDERED BY THE COURT; OR

28 (2) 90 DAYS AFTER THE DATE THAT THE COURT ORDERED THE LOCAL
29 DEPARTMENT OR CHILD PLACEMENT AGENCY TO PRODUCE THE REPORT.

30 3-823.

31 (e) At a permanency planning hearing, the court shall:

32 (1) Determine the child's permanency plan, which may be:

33 (i) Reunification with the parent or guardian;

34 (ii) Placement with a relative for:

- 1 (i) Shall administer the Program;
- 2 (ii) Shall report annually to the Chief Judge of the Court of Appeals
3 and, subject to § 2-1246 of the State Government Article, to the General Assembly
4 regarding the operation of the Program; and
- 5 (iii) May adopt rules governing the implementation and operation of
6 the Program including funding, training, selection, and supervision of volunteers.

7 **Article - Family Law**

8 5-525.

- 9 (e) (1) In developing a permanency plan for a child in an out-of-home
10 placement, the local department of social services shall give primary consideration to
11 the best interests of the child. The local department shall consider the following
12 factors in determining the permanency plan that is in the best interests of the child:
- 13 (i) the child's ability to be safe and healthy in the home of the
14 child's parent;
- 15 (ii) the child's attachment and emotional ties to the child's natural
16 parents and siblings;
- 17 (iii) the child's emotional attachment to the child's current caregiver
18 and the caregiver's family;
- 19 (iv) the length of time the child has resided with the current
20 caregiver;
- 21 (v) the potential emotional, developmental, and educational harm
22 to the child if moved from the child's current placement; and
- 23 (vi) the potential harm to the child by remaining in State custody
24 for an excessive period of time.
- 25 (2) To the extent consistent with the best interests of the child in an
26 out-of-home placement, the local department shall consider the following
27 permanency plans, in descending order of priority:
- 28 (i) returning the child to the child's parent or guardian, unless the
29 department is the guardian;
- 30 (ii) placing the child with relatives to whom adoption [,] OR
31 CUSTODY AND guardianship, [or care and custody,] in descending order of priority,
32 are planned to be granted;
- 33 (iii) adoption in the following descending order of priority:

1 1. by a current foster parent with whom the child has resided
2 continually for at least the 12 months prior to developing the permanency plan or for
3 a sufficient length of time to have established positive relationships and family ties;
4 or

5 2. by another approved adoptive family;

6 (iv) placing the child [in a court approved permanent foster home
7 with a specific caregiver] WITH A NONRELATIVE GUARDIAN; OR

8 (v) [an independent living arrangement; or

9 (vi) long-term foster care] CONTINUATION IN A SPECIFIED
10 PLACEMENT ON A PERMANENT BASIS BECAUSE OF THE CHILD'S SPECIAL NEEDS OR
11 CIRCUMSTANCES.

12 (i) The Administration shall adopt regulations that:

13 (1) [for the 12-month period beginning on October 1, 1983, and for each
14 subsequent 12-month period, establish specific goals as to the maximum number of
15 children who will remain in foster care for more than 2 years] ESTABLISH GOALS AND
16 SPECIFY PERMANENCY PLANNING PROCEDURES THAT:

17 (I) MAXIMIZE THE PROSPECT FOR REDUCING LENGTH OF STAY IN
18 OUT-OF-HOME PLACEMENT IN THE BEST INTERESTS OF CHILDREN; AND

19 (II) IMPLEMENT THE INTENT OF THIS SECTION;

20 (2) prohibit a local department from seeking the custody or guardianship
21 of a child for placement in foster care solely because the child's parent or guardian
22 lacks shelter or solely because the child's parents are financially unable to provide
23 treatment or care for a child with a developmental disability or mental illness; [and]

24 (3) require the local department to make appropriate referrals to
25 emergency shelter and other services for families with children who lack shelter;

26 (4) ESTABLISH CRITERIA FOR INVESTIGATING AND APPROVING FOSTER
27 HOMES; AND

28 (5) FOR CASES IN WHICH THE PERMANENCY PLAN RECOMMENDED BY
29 THE LOCAL DEPARTMENT OR UNDER CONSIDERATION BY THE COURT INCLUDES
30 APPOINTMENT OF A GUARDIAN AND RESCISSION OF THE LOCAL DEPARTMENT'S
31 CUSTODY OR GUARDIANSHIP OF A CHILD:

32 (I) ESTABLISH CRITERIA FOR INVESTIGATING AND DETERMINING
33 THE SUITABILITY OF PROSPECTIVE RELATIVE OR NONRELATIVE GUARDIANS; AND

34 (II) REQUIRE THE FILING OF A REPORT WITH THE COURT AS
35 PROVIDED IN § 3-819.2 OF THE COURTS ARTICLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2004.